

REMARKS

In response to the examiner's restriction requirement, the Applicant provisionally elects for prosecution claims 1-3 and 5, drawn to the Applicant's system for engaging in electronic commerce, with traverse, and respectfully requests reconsideration and withdrawal of the requirement, in light of the following discussion.

A restriction requirement is proper under 35 U.S.C. §121 only if two or more "independent and distinct" inventions are claimed in one patent application. MPEP §802.01. "The term 'independent' means that there is no disclosed relationship between the two or more subjects disclosed, that is they are unconnected in design, operation or effect, for example: . . . (2) [a] process and apparatus incapable of being used in practicing the process." MPEP §802.01. Additionally, the term "distinct" means that two or more subjects are related ... but are capable of separate manufacture, use or sale as claimed, and are patentable over each other. MPEP §802.01. Clearly, that is not the case here.

Furthermore, the Applicant respectfully submits that MPEP §806.05(e) does not provide that restriction is proper if and when "at least some of the steps in the process as claimed can be practiced by another materially different apparatus or by hand." If the criteria was "some of the steps" then just about every process relating to use of an apparatus could be said to be the subject of a separate patent application. The requirements explained in MPEP §806.05(e) clearly state that for restriction to be proper, either or both of the following must be true: (A) the process as claimed can be practiced by another materially different apparatus or by hand, or (B) the apparatus as claimed can be used to practice another and materially different process. MPEP §806.05(e). The Applicant respectfully submits that its method as claimed in Claim 4 cannot be fully performed by hand because a "database" is inherently a computer science term

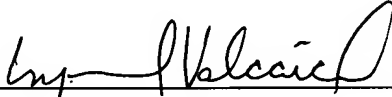
and a database is not readily searchable by hand. Thus, restriction should not be required for the Applicant's one method claim and there would be no materially increased burden in searching by not requiring restriction in this case. The Applicant respectfully submits that, contrary to examiner's assertions, the system for engaging in electronic commerce as claimed in claims 1-3 and 5, which examiner correctly notes is in class 709, and the method for buyers and suppliers of goods to engage in commerce, as claimed in claim 4, which examiner correctly notes is in class 705, do not require additional searching beyond what would be required for a single invention. Class 705 is a logical class to include in a search when searching systems for engaging in electronic commerce, in Class 709.

The Applicant respectfully submits that restriction is not proper in this case and therefore respectfully requests that the requirement be withdrawn.

Respectfully submitted,

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